

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

KIM DOTCOM, et al.,

Defendants

)
)
) The Honorable Liam O’Grady
)
)
) Criminal No. 1:12-CR-3
)
)
)

MOTION OF DEFENDANT-MEGAUPLOAD TO FILE *NUNC PRO TUNC*
[PROPOSED] RESPONSE TO THE EMERGENCY MOTION
FOR PROTECTIVE ORDER OF NON-PARTY CARPATHIA HOSTING, INC.

In anticipation of, and contingent upon, this Court’s grant of appropriate leave, Defendant Megaupload Limited (“Megaupload”) hereby specially appears to seek leave to file *nunc pro tunc*, specifically as of today’s date, its proposed Response to the Emergency Motion for Protective Order filed in this case by Non-Party Carpathia Hosting, Inc. (“proposed Response”).¹ A copy of Megaupload’s proposed Response is appended hereto for the benefit of the parties and the Court. As grounds for this motion, Megaupload respectfully states that:

1. The instant circumstances are truly extraordinary insomuch as (a) Megaupload’s assets, totaling tens of millions of dollars that otherwise would be available for Megaupload to fund its legal defense by counsel of its choice, have been frozen; (b) Megaupload’s chosen counsel’s instant appearance is contingent upon subsequent grant of leave to appear on a limited basis, and (c) the prospect that potentially critical evidence might be left to spoliage is right now

¹ Undersigned counsel today filed a Motion for Leave to Enter a Limited Appearance on Behalf of Megaupload and Kim Dotcom. Docket No. 60. Footnote 3 of our Motion for Leave mistakenly indicates that the proposed Response of Megaupload to Carpathia’s Emergency Motion would be attached to the motion as Exhibit A. Instead, the proposed Response is attached hereto.

the subject of a pending Emergency Motion for Protective Order by Non-Party Carpathia, as to which Megaupload is critically, vitally, and uniquely interested. Simply put, Megaupload perceives pressing, exigent need to weigh in via its Response and perceives no means, superior to the instant means, by which to do so consistent with the existing schedule.

2. By appending its proposed Response hereto, Megaupload is ensuring that the Government has full and fair notice of its contents and ample opportunity to review the Response in advance of the hearing on Carpathia's Emergency Motion, which is scheduled for Friday of next week, April 13, 2012. Because the Government, Carpathia, and other interested parties will be in receipt of the Response well before the hearing, none of the parties will be prejudiced by the proposed Response being deemed to have been properly filed as of this day in the event that the requested leave is subsequently granted.

3. To the extent the Court may desire submission of the proposed Response in some other fashion, in some other form, or at some other time, Megaupload will be glad to comply with any such instruction that may be forthcoming.

* * *

For the foregoing reasons, Megaupload respectfully requests that the proposed Response appended hereto be deemed filed *nunc pro tunc* as of this date at such time as the Court may grant the requested leave for the undersigned attorneys to enter a limited appearance in this case.

Respectfully submitted,

/s/ Paul Brinkman

William A. Burck

Derek L. Shaffer

Paul Brinkman (VSB # 35950)

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Counsel for Defendant Megaupload Limited

Dated: April 5, 2012

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2012, the foregoing MOTION OF DEFENDANT-MEGAUPLOAD TO FILE *NUNC PRO TUNC* [PROPOSED] RESPONSE TO THE EMERGENCY MOTION FOR PROTECTIVE ORDER OF NON-PARTY CARPATHIA HOSTING, INC. was filed and served electronically by the Court's CM/ECF system upon all registered users.

/s/ Paul Brinkman
Paul Brinkman (VSB # 35950)